

Central Administrative Tribunal
Jabalpur Bench

OA No.335/05

Jabalpur, this the 16th day of December, 2005

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

S.R.Bade

S/o Late Shri Bhagwat Rao Bade

Retired O.S.II from the

Office of Deputy CE/C

Central Railway, Gwalior.

R/o Opp.Mojeshwar Mandir

Palve Ka Bada, M.L.B.Road

Shinde Ki Chawani, Lashkar

Gwalior (MP).

Applicant.

(By advocate Shri D.P.Singh)

Versus

1. Union of India through
General Manager
North Central Railway
Nawab Yusoof Road
Allahabad (UP).
2. The Chief Administrative Officer
(Construction) North Central
Railway, Nawab Ysoof Road
Allahabad.
3. The Chief Engineer
(Construction), Coordination
North Central
Railway, Nawab Ysoof Road
Allahabad.
4. The F.A. & CAO [C]
DRM Office Building
North Central Railway,
Nawab Ysoof Road
Allahabad.
5. The Deputy F.A & CAO [C]
North Central Railway,
Behind DRM Office



Jhansi.

Respondents

(By advocate Shri V.K.Bhardwaj)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following reliefs:

- (i) Quash the order Annexure A1 dated 20.12.2002.
- (ii) Direct the respondents to refund the amount of retiral dues of Rs.35,346/- recovered from the applicant's retiral dues.
- (iii) Direct the respondents to pay interest @ 18% on the recovered amount.

2. The brief facts of the case are that the applicant was initially appointed on 16.8.1965 as Junior Clerk. He retired on reaching superannuation on 31.1.2003. While working as Junior Clerk in the grade of Rs.950-1500, he was promoted as Senior Clerk on adhoc basis in the grade of Rs.1200-2040 vide order dated 4.12.1986. He was again promoted as Head Clerk on adhoc basis for a period of 3 months in the grade of Rs.1400-2300. Applicant was duly promoted on regular post of Senior Clerk with effect from 6.10.1987 by giving a proforma seniority and fixation of pay as per the recommendation of DPC vide order dated 6.9.1989. The Audit did not take note of the promotion of applicant from the post of Senior Clerk (adhoc) to the post of Senior Clerk (regular). Therefore, the applicant was reverted from the post of Head Clerk (adhoc) to the post of Senior Clerk by order dated 14.1.1991. Later on the applicant was again promoted as Head Clerk (adhoc) against a vacant and sanctioned post in the grade of Rs.1400-2300 vide order-dated 28.2.1991. Thereafter he was promoted as such on regular basis vide order dated 19.8.1991. Accordingly the pay of the applicant was fixed as Rs.1600/-. On promotion of the applicant as Office Superintendent Grade II on regular basis in the scale of Rs.1600-2600 vide order-dated 27.9.95, he made an application on 6.10.95 opting for fixation of his pay from



1.12.1995 instead of 1.10.95. After a lapse of 15 years, at the fag end of superannuation, the FA&CAO(C) took an objection without any reason and recovered an amount of Rs.35346/- from the applicant without affording him any opportunity of hearing and without holding any enquiry. The applicant is aggrieved by the order dated 20.12.2002 passed by the FA & CAO, Jhansi whereby the recovery of the amount of Rs.35,346/- has been ordered from the retiral dues of the applicant. Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the impugned order A-1 has been issued without following any principle of natural justice and therefore it is illegal. The respondents have nowhere stated that the applicant has either misrepresented or concealed any facts before the respondents regarding the matter in question. The service records of the applicant were being duly checked and inspected by the respondent authorities from time to time. At the fag end of service at the time of retirement, the recovery has been made without issuing any notice. Therefore the action of the respondents is not sustainable. Learned counsel of the applicant has drawn our attention to the case reported in (1994) 2 SCC 521 – Shyam Babu Verma and others v. UOI and others, decided on February 8, 1994 and also to (1994) 28 ATC 747 – Sahib Ram v. State of Haryana and others and argued that the respondents could not have denied the facts mentioned in Para 6 of the OA. Hence the applicant is entitled for the relief claimed.

4. On the other hand, learned counsel for the respondents argued that the applicant had filed an earlier OA No.391/03 and that OA was withdrawn. Only proforma promotion was awarded to the applicant proforma pay fixation and the seniority was awarded as per Board letter dated 23.5.1985. Hence it cannot be said that applicant was promoted on regular basis. The post on which the applicant was working was work charged post and no regular appointment was made in the said department. For settling the retirement dues and pension fixation, the records were called for and at that time, it came to the



knowledge of the respondents that the applicant was drawing higher salary for which he was not entitled and after due scrutiny of the record, the authorities came to the conclusion that the last pay of the applicant should be Rs.6900/- and not Rs.7075/- which was erroneously fixed. Hence the order of recovery Annexure A1 was issued.

5. After hearing learned counsel for both parties and perusing the records, we find that OA No.391/03 filed by the applicant earlier was dismissed as withdrawn with liberty to approach the Tribunal. In this regard, the argument advanced on behalf of the applicant that the applicant has the right to file the present OA seems to legally correct and justified. We have perused the reply of the respondents. Para 6.8 of the reply is silent on the facts of the similarly situated employees, as alleged by the applicant. We have also perused the judgment in Shyam Babu Verma and Others vs. UOI & Ors. (supra). In this judgment, the principle laid down by the Hon'ble Supreme Court reads as follows:

"Service Law - Relief-Higher pay scale erroneously given to petitioners since 1973-Pay scale of petitioners reduced in 1984 - Held, since petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them."

In Sahib Ram Vs. State of Haryana and others (supra), the principle laid down by the Hon'ble Supreme Court reads as follows:

"Pay - Excess payment - Recovery - upgraded pay scale given due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee - in such circumstances recovery of the payment already made, restrained".

6. Respondents have nowhere alleged or contended that the applicant has either misrepresented or concealed any facts before them regarding the matter. Hence in view of the principles laid down by Hon'ble Supreme Court in the aforesaid judgments, this OA deserves to be allowed. Hence the impugned order dated 20.12.2002



is quashed and the respondents are directed to refund the amount recovered by them from the applicant within 2 months from the date of receipt of a copy of this order.

7. The OA is disposed of as above. No costs.

(Madan Mohan)
Judicial member

(M.P. Singh)
Vice Chairman

22.

पृष्ठांकन सं ओ/व्य. जयपुर, दि.

- (1) सार्वजनिक
 - (2) आवश्यक
 - (3) प्रत्यक्ष
 - (4) अंतराष्ट्रीय
- सूचना एवं आवश्यक

१. रजिस्ट्रार

2112

Ignored
27.12.05